IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1314 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AYESHABEN SARFUDDIN SHAIKH

Versus

VITTHALBHAI MOTIBHAI RATHOD

Appearance:

MR SUNIL K SHAH for Petitioner

MR KK NAIR for Respondent No. 6

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/12/1999

ORAL JUDGEMENT

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, at the instance of the original

claimant, who had filed Motor Accident Claims Petition no.2548/90 on account of injuries sustained by her as a result of the accident.

2. The Tribunal in the impugned judgment and award has awarded a total of Rs.1,14,000/- as compensation under various heads.

3. Learned Counsel for the appellant-original claimant submits that the compensation awarded is very meagre and the appellant-original claimant is entitled to to a substantially higher figure.

4. We have heard the learned Counsel for the appellant extensively and have referred to such evidence on the record of the case to which our attention has been drawn.

5. We are in general agreement with the appreciation of evidence on the part of the Tribunal, conclusions drawn therefrom and the findings of fact recorded. This appeal is, therefore, liable to be dismissed.

6. Only a few points which are particularly urged by the learned Counsel for the appellant are required to be noted.

7. Firstly, we note that the Tribunal has awarded Rs.9,900/- by way of medical expenses. No exception can be made to this figure, inasmuch as the claim of the claimant herself is Rs.10,000/-. A further amount of Rs.1000/- has been awarded by way of special diet, although, it is doubtful whether a special claim has been made under this head. A further amount of Rs.6000/has been awarded as loss of current income i.e. to say loss of income during the period of hospitalization and follow-up treatment. No exception to this figure can be taken, inasmuch as this amount is computed on the basis of the claimants own asserted income of Rs.500/-per month without any further corroboration in this regard. A further sum of Rs.2000/-has been awarded analogous to attendant charges, on the hypothesis that if the relatives of the claimant had not attended to her in the hospital she would have had to engage the services of an attendant, and therefore, she would have to spend Rs.2000/-. This hypothesis, as aforesaid, is also generous and works in favour of the claimant.

8. The Tribunal has awarded Rs.45,000/- under the head of pain, shock and suffering which according to the appellant is a very meagre amount. In this context,

learned Counsel for the appellant seeks to rely upon a Supreme Court decision in the case of AMAR SINGH V. ISHWAR AND ORS. ((1991) 1 SCC 214), wherein the Supreme Court found that an award of Rs.50,000/- for pain, shock and suffering was on the lower side and was enhanced by Rs.50,000/-. However, we note that the enhancement made by the Supreme Court in the aforesaid decision was " in the circumstances of the case " and because the injured had suffered grievous injuries and had to undergo hospitalization for more than three years though intermittently and also to undergo various operations. On the facts and circumstances of the present case, the appellant had to undergo only one surgery, and she had to undergo medical treatment of only two and a half months which includes the period of hospitalization. On the facts of the case, we feel that an award of Rs.45,000/- under the head of pain, shock and suffering is sufficient and adequate, if not generous.

The learned Counsel for the appellant also seeks to rely upon a decision of the Supreme Court in the case of R.D. HATTANGADI V. PEST CONTROL (INDIA) PVT. LTD. reported in 1995 ACJ 366. In this case as well, the Supreme Court inter alia increased the award under the head of pain, shock and suffering and loss of amenities of life from Rs.1 lakh to Rs. 3 lakhs. However, we note from the observations made in paragraph 17 of the said decision, that the award under this head has been enhanced by the Supreme Court on the basis that " special circumstances of the claimant have to be taken into account including his age, unusual deprivation he has suffered, effect on his future life".

9. In our opinion, therefore, the aforesaid two decisions of the Supreme Court are based on the special facts of the particular case being considered by the Supreme Court.

10. We may also observe here the generosity of the Tribunal in assessing the permanent partial disability of the injured claimant at 50% of the body as a whole. The Tribunal has rightly pointed out that there is only a certificate of the hospital to the effect that her disability is 60%. However, what we are required to note is that no one has been examined, let alone an expert witness, such as, an Orthopaedic Surgeon, who would either prove the contents of the certificate or would be able to give his expert opinion as to the extent of permanent partial disability in terms of the body as a whole. Thus, the contents of the certificate have not been proved. Looking to this state of evidence on

record, we are of the opinion, that the Tribunal has been generous in assessing her disability of 50% of the body as a whole.

11. We also note that the assertion by the claimant as to the income earned by her has been accepted by the Tribunal at its face value without any supporting evidence whatsoever. The claimant claims to be a salaried person in employment but neither has the employer been examined nor any income certificate produced. However, since the income asserted by the injured claimant and accepted by the Tribunal is not exorbitant, we are also prepared to accept the same. The computation of loss of future income is based on this disability of 50%, applied to her professed income of Rs.500/-per month. Looking to the fact that the claimant was aged 30, a multiplier of 16 has been applied which is also reasonable. Thus, in our opinion, no fault can be found with the Tribunal as regards the computation of loss of future income.

12. A point of argument was sought to be raised to the effect that the Tribunal has not considered a rise in the prospective income of the applicant or to consider the future medical expenses. We are not inclined to deal with such hypothetical claims inasmuch as these points have not been urged by the claimant either in her deposition or even by Counsel for the claimant orally before the Tribunal. In our opinion, it is far too late in the day to raise hypothetical questions without any foundation of a plea and averment or evidence. In our opinion, therefore, there is no substance in the present appeal and the same is summarily dismissed.

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